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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904. No. 86.

JAMES C. CORRY, *Plaintiff in Error,*

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL., *Defendants in Error.*

IN ERROR TO THE COURT OF APPEALS TO THE STATE OF MARYLAND.

Brief on Behalf of the Mayor and City Council of Baltimore and James P. Gorter, City Collector.

This case involves the validity *vel non* of the Maryland Statute taxing non-resident stockholders of Maryland corporations at the place in Maryland where such corporations have their principal office.

Statement of the Case.

James C. Corry, the plaintiff in error, is a resident and citizen of the State of Pennsylvania, and a stockholder in the New York and Baltimore Transportation Line. This company was incorporated by Chapter 112 of the Acts of the General Assembly of Maryland passed in the year 1847.

The laws of Maryland provide that for purposes of assessment and taxation, the situs of shares of stock held by non-

residents of Maryland in Maryland corporations shall be the place in Maryland, where such corporations have their principal office, and that such shares of stock shall be there valued and assessed to the non-resident owners thereof. The taxes themselves are collected from the corporation, but when so paid they may be charged by the corporation to the account of the individual stockholders. In the case of non-resident stockholders, the tax is made a lien on the stock until paid. (See part I, post, where the Maryland statutes are reveiwed.)

The capital stock of the New York and Baltimore Transportation Line was duly valued and assessed for purposes of taxation for the years 1899 and 1900, at $14.97 per share. The Company being a corporation of Maryland, having its principal office in Baltimore city, and the plaintiff in error being a non-resident of Maryland, the shares of stock belonging to the plaintiff in error were duly valued and assessed to him in the city of Baltimore, and payment of the taxes levied thereon was duly demanded of the New York and Baltimore Transportation Line, by the proper State and city officials (Bill of Complaint, paragraph VI, Record, page 3.)

The corporation was about to comply with said demands, (bill of complaint, paragraph VII, Record, page 3,) when, on September 20, 1900, the plaintiff in error filed his bill of complaint in the Circuit Court No. 2 of Baltimore City against the Mayor and City Council of Baltimore, James P. Gorter, City Collector, Murray Vandiver, State Treasurer, and the New York and Baltimore Transportation Line, the defendants in error. The bill alleged that the Maryland statutes providing for the taxation of non-resident stockholders in Maryland corporations on account of their stock, operated to deprive such stockholders of their property without due process of law and in contravention of the Constitution of the United States, and the Fourteenth Amendment thereto. The bill prayed for an injunction to restrain the City of Baltimore, the City Collector and the State Treasurer from

collecting the said taxes, and to restrain the corporation from paying said taxes to the State and City officials.

The bill was filed on the theory that the corporation, by paying the said taxes, which it was alleged to be about to do, would place itself in the position of a creditor of the plaintiff in error, and would thus make the plaintiff in error a debtor of said corporation, without his consent and against his will. (Bill of Complaint, paragraph VII, Record, pages 3 and 4.)

The several defendants duly filed answers to the bill of complaint (Record pages 8 to 13), and the plaintiff in error then filed a general replication (Record page 13); an order was subsequently passed granting leave to take testimony, (Record page 13); but before any testimony was taken, it was agreed by counsel for all the parties, that the several answers filed in the cause should be withdrawn, and that demurrers to the bill of complaint should be considered as filed under proper affidavits by each of the defendants. (Record, page 15.)

On June 24, 1902, the Circuit Court No. 2 of Baltimore City, after argument, passed an order sustaining the demurrer to the bill of complaint and dismissing the bill. (Record, page 15.)

On July 25, 1902, the plaintiff in error entered an appeal from this order or decree to the Court of Appeals of Maryland (Record, page 16), and on January 16, 1903, the Court of Appeals of Maryland, after argument, affirmed the judgment of the lower Court. (Record, page 16.) The opinion of the Court of Appeals of Maryland is set forth on pages 17 to 20 of the Record.

On July 1, 1903, the plaintiff in error prayed for the allowance of a writ of error to the Supreme Court of the United States (Record, page 21), which writ of error was duly allowed (Record, pages 22 and 23). The assignments of error are set forth on page 24 of the Record.

The grounds upon which the Maryland statutes in question are alleged in this Court to be unconstitutional, are two:

1. That the Maryland statutes, providing for the taxation of non-resident stockholders on account of the shares of stock owned by them in Maryland corporations, impose a tax, not upon the corporation, nor upon any property in Maryland, but upon the person of the non-resident stockholder, and that this constitutes an attempt to take property without due process of law.

2. That the statute laws of Maryland contain no provision for notice or opportunity to be heard to the individual stockholders before determining the value of the shares of stock upon which taxes are to be imposed.

In answer to the first of these contentions, these defendants in error submit, that the State of Maryland has full power to fix the *situs* of the shares of stock held by non-residents in Maryland corporations at the place in Maryland where such corporations have their principal office, and to provide for the taxation in Maryland of such non-resident stockholders on account of their stock, without in any way violating the constitutional provision that no person shall be deprived of his property without due process of law. (See part III, post.)

In answer to the second ground upon which the Maryland statute is attacked, these defendants in error contend, that although the laws of Maryland may make no provision for notice to the stockholders, or for any opportunity to be heard by them, upon the question of the valuation of their stock for purposes of taxation, yet ample provision is made for notice to, and an opportunity to be heard by, the corporation itself; and that inasmuch as the corporation, under the Maryland system of taxation, is the agent and representative of the stockholders in these matters, the Maryland law gratifies all the requirements of the Federal Constitution. (See Part IV, post.)

In connection with this latter point, we will also contend that equity has no jurisdiction to enjoin the collection of taxes which the State has the power to impose, merely because the law imposing them fails to provide for notice or an opportunity to be heard. (See Part V, post.)

PART I.

Maryland Statutes.

For the convenience of the Court we will first give a brief explanation of the Maryland system of taxing shares of stock and a brief summary of the Maryland statutes providing for such taxation. These statutes are codified in Article 81 of the Code of Public General Laws of Maryland of 1902. They are the statutes contained in Article 81 of the Code of Maryland of 1888, as amended by subsequent legislation.

Article 81, Section 2, of the Code of 1902 (Code, 1888, Article 81, Section 2, as amended by Acts of 1896, Ch. 120, and Ch. 143), provides for the taxation of all *real estate* situated in Maryland and belonging to corporations doing business therein, as the property of such corporations, and for the taxation in Maryland of shares of stock owned by *residents* of Maryland in both domestic and foreign corporations.

Section 90 of Article 81 of the Code of 1902 (Code, 1888, Article 81, Section 84) provides for the payment by all corporations doing business in Maryland of the State tax imposed upon the shares of capital stock of such corporations "without regard to the place of residence of stockholders."

This provision, requiring the payment of taxes on shares of stock "without regard to the place of residence of stockholders," was first enacted in Chapter 289 of the Acts of 1843.

Section 96 of Article 81 of the Code of 1902 (Acts 1890, Ch. 244) imposes a penalty in case of the failure of any corporation to pay, within the time limited in said section,

the State taxes levied on its capital stock; recovery of such penalty and taxes to be enforced by suit against the corporation in the manner provided in Sections 97 to 100.

Section 150 of Article 81 of the Code of 1902 (Code 1888, Article 81, Section 131), entitled "Assessment of corporate stock owned by non-residents," provides as follows:

> "For the purpose of valuing the stock of banking and other private corporations held by non-resident stockholders, it is hereby declared and understood that the stock of banking, insurance or other corporations usually termed moneyed institutions is situate at the place at which the principal office for the transacting the business of such corporation is situate; the stock of a turnpike, railroad, steamboat, canal or other improvement corporation is situate at the place where its principal office for the transaction of business shall be established, if the said office be within the limits of this State, and shall be so assessed, and if not, then the assessable property of such corporation shall be valued and assessed in the county or counties in which said property is situate, and in the city of Baltimore so far as it is situate in said city; and the stock of mining, manufacturing and other like corporations situate at the place where the works of such corporation, or the greater part of their operations, respectively, shall be conducted, shall be assessed in like manner in the county or city where such works are situate."

This provision was first enacted, in substantially the same terms as at present, by Section 16 of Chapter 23 of the Acts of the Extra Session of the General Assembly of Maryland of 1841,—six years before the charter of the New York and Baltimore Transportation Line was granted. It was re-enacted by Section 17 of Chapter 337 of the Acts of 1852, by Section 14 of Chapter 157 of the Acts of 1866, and by Section 142 of Chapter 483 of the Acts of 1874; and was codified in the Code of 1888 as Section 131 of Article 81.

The official in Maryland whose duty it is to assess shares of stock, for purposes of taxation, is now the State Tax

Commissioner. (Code 1902, Article 81, Section 151; Code 1888, Article 81, Section 132.)

Section 153 of Article 81 of the Code of 1902 (Code, 1888, Article 81, Section 133, as amended by the Acts of 1902, Chapter 417) enables the State Tax Commissioner to obtain from the several corporations the information necessary to assess the shares of stock, and, by this section, it is also made the duty of the corporation itself to pay the State Tax imposed upon its stock.

Code, 1902, Article 81, Section 159, (Code, 1888, Article 81, Section 138, as amended by Acts 1902, chap. 468), directs the officers of all corporations to annually "furnish to the County Commissioners of each county, or the Appeal Tax Court of Baltimore City, and the city clerk of each city, town or village incorporated in the State of Maryland, in which any of its stockholders may reside, a list of the said stockholders, so far as their place of residence may be known to such officer, together with the number of shares of stock held by each." This section then continues as follows:

> "And for the valuation and effectual collection of taxes assessed on the stock of banks or other incorporated institutions held by non-residents, the president or other proper officer of the corporation shall annually on or before the first day of March make out and deliver to the county commissioners of the county or appeal tax court or city clerk of the municipal corporation where said corporation is situate, an account of the number of shares of stock in such corporation held by persons not residents of this State, and the same shall be valued at its actual cash value to and in the name of such stockholders respectively; but the tax assessed on such stock shall be levied and collected from said corporation and may be charged to the account of such non-resident stockholders in the said corporation, and shall be a lien on the stocks therein held by such stockholders, respectively, until paid."

It should be said in passing, that the valuation of the shares of stock in corporations doing business in Maryland

is not made by the County Commissioners, or by the Appeal Tax Court, (to whom the lists called for by the above section are furnished), but is made by the State Tax Commissioner, as hereinafter set forth.

See—James Clark Company vs. Cumberland, 95 Md. 468.

The law just referred to and quoted was first enacted by Section 17 of Chapter 23 of the Acts of 1841,—six years before the charter of the New York and Baltimore Transportation Line was granted.

By the Act of 1843, Chapter 289, it was made the duty of the corporation to pay the taxes, and the stockholders were relieved from liability therefor. See State vs. Mayhew, 2 Gill, 487, 495. The Act of 1852, Chapter 337, Section 18, however, restored the law as it formerly stood. This last-named section was subsequently codified in the Code of 1860 as Section 97 of Article 81; was re-enacted by the Acts of 1864, Chapter 391, and by the Acts of 1874, Chapter 483, Section 87, and codified in the Code of 1888 as Section 138 of Article 81. The amendment of 1902 did nothing more than extend the provisions of the section to incorporated towns in Maryland.

Section 162 of Article 81 of the Code of 1902, (Code 1888, Article 81, Section 141, as amended by Acts 1896, chapter 120), provides that at the time of making the returns of stockholders required by Section 159, the president or other proper officer of every corporation incorporated under the laws of Maryland, or doing business therein, shall also furnish to the County Commissioners, or to the Appeal Tax Court of Baltimore City, a true statement of the real estate owned by such corporation, and situated in such county or city. Such real property is then valued and assessed to the corporation so owning the same, and the valuation is transmitted to the State Tax Commissioner. State, county and municipal taxes are required to be levied upon, and paid by,

the said corporations upon such assessments, in the same manner as taxes are levied upon and paid by individual owners of real estate.

Having provided in this way for the assessment and taxation of corporate real estate situate in Maryland, Section 162 then proceeds to provide for ascertaining the taxable value of the shares of stock as follows:

> "The respective taxable value of the shares of stock in such bank, corporation and joint stock companies shall be ascertained by the State Tax Commissioner in the manner following: He shall deduct the assessed value of such real property belonging to the said respective banks, corporations or joint stock companies from the aggregate value of all shares of such respective banks, corporations or joint stock companies and divide the remainder by the number of shares of the capital stock or shares of such respective banks, corporations or joint stock companies, and the quotient shall be the taxable value of each of such respective shares for State purposes, and all State taxes thereon shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares of such banks, corporations or joint stock companies shall have been finally determined or made for State purposes the State Tax Commissioner shall certify to the county commissioners of each county where any of the stockholders or shareholders may reside, and to the appeal tax court of Baltimore city if any of said stockholders or shareholders reside in said city, and to the county commissioners of the county in which such bank, corporation or joint stock company is situated, or to the appeal tax court of Baltimore city if it is situated in said city, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint stock companies, owned by residents of this State, and taxable within this State, shall for county and municipal purposes be valued to the owner thereof in the county or city in this State in which such owners shall respectively reside,

and the said taxable value of such of said stock or shares as are held by non-residents of this State shall for county and municipal purposes be valued to the owners thereof in the county or city in which said bank, corporation or joint stock company is situated; but all county or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint stock company, and when so paid shall or may be charged by such bank, corporation or joint stock company to the account of such stockholders or shareholders, respectively."

The requirement of deducting the assessed value of the real estate from the aggregate value of the capital stock first appears in Section 5 of Chapter 266 of the Acts of 1847, and the reason of this requirement was that it had been held in The Tax Cases, 12 G. & J. 117, and in Gordon, Executor, vs. Mayor and City Council of Baltimore, 5 Gill, 231 (and later in County Commissioners vs. Farmers and Mechanics National Bank, 48 Md. 119), that to tax both the stock of the corporation and its real and personal property was double taxation, and, therefore, invalid. (The personal property of a corporation whose shares of stock are subject to taxation is expressly exempted by Code, 1902, Article 81, Section 4.)

Code, 1902, Article 81, Section 165 (Code, 1888, Article 81, Section 144), provides for an appeal to the Comptroller of the Treasury and to the State Treasurer, sitting as a Board of Review, from the valuation placed by the State Tax Commissioner upon the shares of stock. This section, first enacted by Section 152, Chapter 178, Acts 1878, reads as follows:

"As soon as the State Tax Commissioner shall have valued and assessed the shares in the several banks and other corporations in this State he shall certify and return the said valuation to the comptroller of the Treasury, who shall at once proceed to notify the president, cashier or other proper officer of such banks or other

corporations of the said valuation and assessment of their shares, respectively, by transmitting to such president or other officer an account of the State taxes due from such bank or other corporation under such valuation and assessment, by mail, under cover, fairly directed to such president or other officer, and shall note in a book the date of placing in the mail the envelope or cover containing such account. If no appeal be taken within thirty days from such transmission, the said valuation and assessment shall be final; but any such bank or corporation may, within thirty days after such notification, appeal from such valuation to the comptroller of the treasury and State Treasurer, stating in such appeal the reasons and grounds of such appeal; and said comptroller and Treasurer shall consider the same, and if the Comptroller and Treasurer shall both be of the opinion that such valuation and assessment so made by the State Tax Commissioner is erroneous and ought to be changed, they shall change the same accordingly, and the valuation and assessment so agreed upon by the Comptroller and Treasurer shall be final; but if either the Comptroller or Treasurer shall agree with the State Tax Commissioner as to the correctness of the valuation so made by him, then such appeal shall be dismissed, and the original valuation shall be and remain as the true valuation of such shares."

The finality of the valuation agreed upon by the Comptroller and the Treasurer is upheld in—

Consumer's Ice Company vs. State, 82 Md. 132.

Salisbury Association vs. Wicomico County, 86 Md. 615.

James Clark Company vs. Cumberland, 95 Md. 468.

There is one other statutory provision relating to the taxation of stock in Maryland corporations held by non-residents. Code, 1902, Article 81, Section 202 (Acts 1896, Chapter 120, Section 178; Acts 1876, Chapter 260, Section 17), among other things, provides as follows:

"All shares of stock in any national bank, corporation, association or company incorporated under the laws of this State, and belonging to any non-resident owner, and all other personal property located in this State belonging to any non-resident owner, shall be valued and assessed to the owner thereof, in the assessment district in which said bank, corporation, association or company may have its principal place of business in this State, or in which said personal property may be so located."

After the taxable value of shares of stock has been ascertained, in accordance with the aforegoing provisions, and has been included in the annual assessment basis, it only remains to formally levy the taxes upon these assessments.

The rate of the State tax is determined by the General Assembly of Maryland (Code, 1902, Article 81, Section 25; Code, 1888, Article 81, Section 22, which section is repealed and re-enacted at each session of the Legislature, and the amount of the state tax prescribed.) The State tax is then levied and imposed by the County Commissioners in the several counties, and in Baltimore city by the Mayor and City Council of Baltimore (Code, 1902, Article 81, Section 1; Code, 1888, Article 81, Section 1; Code, 1902, Article 81, Section 25; Code, 1888, Article 81, Section 22; Code, 1902, Article 81, Section 29; Code, 1888, Article 81, Section 26.)

The rate of the local tax in Baltimore city is determined in accordance with Section 40 of the Charter of Baltimore City (Code, Public Local Laws, Article 4, being Acts 1898, Chapter 123), and is levied by ordinance of the Mayor and City Council. In the several counties, the rate of the county tax is determined and the tax is imposed by the County Commissioners.

In Baltimore city, the City Collector is the official whose duty it is to collect both State and city taxes (Code, 1902, Article 81, Section 34, being Code, 1888, Article 81, Section 31, as amended by Acts 1900, Chapter 619; Charter of Baltimore City, Sections 42, 52 and 58.)

It will thus be seen that the system of corporate taxation in Maryland is as follows : Broadly speaking, (and excluding franchise taxes, gross receipt taxes, and the like), there are two taxes to which all property in Mayland is subject,—a State tax for State purposes, and a city tax for local purposes.

The real estate in Maryland of all corporations, both domestic and foreign, is assessed and taxed precisely like the real estate of individuals, and taxes thereon are due and paid by the corporation in the county or city where such real estate is situated.

The taxable value of the shares of stock of all corporations is determined in the following manner : The State Tax Commissioner each year determines the aggregate value of the shares of capital stock of each corporation ; he then deducts from this aggregate value the assessed value of the corporation's real estate, and divides the remainder by the total number of shares of stock. The quotient is the taxable value of each of such shares for State purposes.

If no appeal from the State Tax Commtssioner's valuation is taken by the corporation to the Comptroller and the Treasurer, or if, on appeal, such valuation is affirmed, then the State Tax Commissioner's valuation becomes final. If, on the other hand, an appeal is taken, and it is determined on such appeal that the valuation of the State Tax Commissioner is erroneous and ought to be changed, then the proper change is made, and this new valuation is final.

When the assessed taxable value of the shares of stock has been ascertained, it is certified by the State Tax Commisioner to the County Commissioners of each county in which any of the stockholders reside ; to the Appeal Tax Court of Baltimore City, if any of the stockholders reside in said city; and to the County Commissioners of the county in which the principal office of the corporation is situated ; or if the principal office of the corporation is situated in Baltimore city, then to the Appeal Tax Court of Baltimore City.

The said taxable value of such shares of stock as are owned by *residents* of Maryland is then valued for county or municipal purposes to the owners thereof in the county or city in which such owners respectively reside.

The situs of stock of Maryland corporations held by non-residents of the State, is declared to be at the place in Maryland where the corporation's principal office is located; and the taxable value of shares of stock held by *non-residents* of Maryland is valued for county and municipal purposes to the owners thereof in the county or city in Maryland where the principal office of the corporation is established.

The assessments having been thus determined, the several County Commissioners and the Mayor and City Council of Baltimore levy the State and local taxes, and the same are put in the hands of the proper officials for collection.

The tax on shares of stock is not paid by the stockholders themselves. The tax is collected from the corporation, and, when so paid, "shall or may be charged" by the corporation "to the account of the stockholders." In the case of *non-resident* stockholders, moreover, the tax is made "a lien on the stocks therein held by such stockholders, respectively, until paid."

PART II.

Maryland Decisions.

In order that this Court may have before it the precise grounds upon which the statutes now claimed to be unconstitutional have been upheld by the Court of Appeals of Maryland, we will now briefly review the Maryland decisions upon the point.

In The Tax Cases, 12 G. & J., 117, the Court of Appeals of Maryland, as early as 1841, held that under the law as it then stood (Acts 1841, Chapter 23, Sections 16 and 17, now Code, 1902, Article 81, Sections 150 and 153 above quoted), "non-residents of the State are liable to the tax in respect of stock held in the banks of this State, as well as residents here."

Gordon, Executor, vs. Mayor and City Council of Baltimore, 5 Gill, 231, (1847), involved an action to recover taxes paid on account of shares of stock held in a Maryland corporation by a non-resident of the State. The right of the city of Baltimore to tax the stock there in question, which was denied on grounds not necessary to go into here, was upheld by the Court. In this case, the power of the city to tax non-resident stockholders on account of their holdings in Maryland corporations does not appear to have been disputed, and, on page 236, the Court said that there could be no doubt of this right "as the situs of the stock was within the limits of the city."

In Appeal Tax Court vs. Patterson, 50 Md., 354 (affirmed in 104 U. S., 592), the Court of Appeals of Maryland held that certain bonds issued by other states and by cities outside of Maryland, and exempted from taxation in the States and cities where they were issued, were taxable in the hands of their owners residing in Maryland. The Court said that the bonds in question, being personal property, followed the person of the owner, and their situs, for purposes of taxation was, therefore, in the State where the owner resided, that is, Maryland.

The Court, however, approved the decision in The Tax Cases, 12 G. & J. 117, to the effect that non-residents of Maryland are liable to taxation in respect of stock held by them in Maryland corporations, and said that this liability rests upon the principle "that the bank being incorporated by the State, it is competent for the State to impose a tax upon its stock wherever and by whomsoever held, because the corporation is the creature of the State and exists by its permission" (Page 368).

In Appeal Tax Court vs. Gill, 50 Md. 377, it was held that stocks and bonds of other States, and of corporations created by them, were taxable in Maryland if owned by residents of Maryland, whether such securities were taxed in the States where they were issued or not.

In Mayor and City Council of Baltimore vs. Baltimore City Passenger Railway Company, 57 Md. 23, it was held to be the duty of the State Tax Commissioner to include in his return to the Appeal Tax Court of Baltimore City the shares of stock owned by non-residents of Maryland in the Baltimore City Passenger Railway Company, a corporation of Maryland, having its principal office in Baltimore City. After referring to the then existing legislation, and especially to Section 142 of Chapter 483 of the Acts of 1874 (now Code, 1902, Article 81, Section 150, above quoted), the Court, on page 36, said:

> "It is clear then that the shares of stock held by non-residents are liable to taxation, and that, for the purposes of taxation, such shares are situate in the city of Baltimore, where the appellee has its principal office."

In American Coal Company vs. County Commissioners of Alleghany County, 59 Md. 185, the Court again held that under Section 150, Article 81, Code, 1902 (then Section 142, Ch. 483, Acts 1874), "shares of stock owned by non-residents of the State are given a fixed situs by law, and are equally liable to taxation as the shares owned by residents of the State. * * * The manifest design of the law was, so far as the right of local taxation was concerned, to give to the city of Baltimore and each of the counties the full benefit of all the taxable property having either an actual or constructive situs within their respective limits." (Pages 192 to 193.)

Speaking further of the right to tax stock in Maryland corporations owned by non-residents the Court, on page 193, said:

> "The appellant is a Maryland corporation deriving its existence and all its powers and franchises from this State. And such being the case, it is settled that the sovereign power of taxation extends to every thing which exists by the authority of the State, or which is introduced with its permission, except where such

> power is expressly, or by necessary implication, excluded. The separate shares of the capital stock of the corporation are authorized to be issued by the charter derived from the State, and are subject to its control in respect to the right of taxation, and every person taking such shares, whether resident or non-resident of the State, must take them subject to such State power and jurisdiction over them. Hence the State may give the shares of stock held by individual stockholders a special or particular situs for purposes of taxation, and may provide special modes for the collection of the tax levied thereon."

The case of Bank vs. Commonwealth, 9 Wall. 353, was cited in support of the above principle.

In the American Coal Company Case, the Court of Appeals further decided that under the statute the corporation was liable to suit for the recovery of the taxes levied on its shares of stock, although the tax itself was a debt of the stockholders.

In Mayor and City Council of Baltimore vs. Hussey, 67 Md. 112, Baltimore city stock was owned by a non-resident of the State, and the City Register deducted from the interest due the annual State tax levied on the stock, and paid the same to the State officials, sending the balance to the owner. Subsequently the owner brought an action to recover the amount of interest thus deducted. The Court held that the stock was not liable to taxation in Maryland, because, being personal property, it followed the person of the owner, and was only taxable at her domicile. The Court held, however, that the taxes having been paid by the city to the State with full knowledge on the part of the stockholder, and without objection on her part, she was not entitled to recover.

This decision—at variance with both the earlier and later decisions of the Court of Appeals of Maryland, and never referred to in subsequent cases upon the same point—may be explained by the fact, which appears from the Court's opinion, that Baltimore City stock is in reality a bond, and

not stock at all, and, therefore, the distinction between stocks and bonds pointed out in Part III of this brief, in the discussion of the case of the State Tax on Foreign Held Bonds, 15 Wall. 300, applies. The true ground upon which the decision should have rested would seem to be the ground discussed hereafter in connection with 15 Wall. 300, namely, that the tax in question could not be imposed, because it operated to impair the obligation of the contract between the City of Baltimore and the holders of its stock.

In United States Electric Power and Light Company vs. State, 79 Md., 63, the Court decided that there was no double taxation in taxing the gross receipts of a corporation whose shares of stock were also taxed, because the former tax was levied upon the corporation, while the latter tax was upon the stockholders themselves. The Court, in speaking of the tax on stock, said, on page 70:

> "But the tax is not a tax upon the stock, or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the State tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and, under existing laws, are taxable property. They belong to the stockholders respectively and individually, and when, for the sake of convenience in collecting the tax thereon, the corporation pays the State tax upon these shares into the State Treasury, it pays the tax, not upon the company's own property, nor for the company, but upon the property of each stockholder, and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence, when the owner of the shares is taxed on account of his ownership, and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all."

See also to the same effect Firemen's Insurance Company vs. Mayor and City Council of Baltimore, 23 Md. 296; Crown Cork and Seal Company vs. State, 87 Md., 687;

Hull vs. Southern Development Company, 89 Md., 8; and Maryland Casualty Insurance Company's Case, 82 Md., 535, 563.

In Baldwin, Guardian, vs. County Commissioners of Washington County, 85 Md. 145, the Court held that stocks and bonds in non-resident corporations, held by a non-resident guardian for a non-resident ward, were liable to taxation in the county in Maryland where the guardian was appointed. This was so because statute in Maryland fixed the situs of property in the hands of a guardian in the county or city where the guardian was appointed. The Court said, on page 156:

> "It must, of course, be admitted that the situs of property of this kind for the purpose of taxation is ordinarily at the domicile of the owner, but the Legislature has the power to fix a different situs, provided, of course, there be no conflict with some provision in the Constitution."

This case was before this Court in 168 U. S., 705; before the Court of Appeals of Maryland again in 89 Md., 587; and again before this Court in 179 U. S., 220. See also Kinehart vs. Howard, 90 Md., 1; Bonaparte, Executor, vs. State, 63 Md., 465; and Mayor and City Council of Baltimore vs. Safe Deposit & Trust Company, Trustee, 97 Md., 659.

In Monticello Distilling Company vs. Mayor and City Council of Baltimore, 90 Md., 416, the Court held that the Maryland Act imposing a tax on distilled spirits was unconstitutional, so far as Baltimore city was concerned, because it failed to provide for a hearing of some kind as to the valuation of the property for taxation, and operated, therefore, to deprive the owner of his property without due process of law.

Compare Fowble vs. Kemp, 92 Md., 630, where the same law was held valid as to the counties in Maryland; and see

Carstairs vs. Cochran, 95 Md., 488, affirmed in 193 U. S., 10, where the law as amended was declared valid.

In Allen, Treasurer, vs. National State Bank, 92 Md., 509, the Court held that the Maryland statute imposing a tax upon mortgages was valid, and included non-resident mortgagees holding mortgages on land in Maryland, as well as resident mortgagees. The Court said:

> "Conceding for the present that the interest of the mortgagee is in the nature of a chose in action, the general rule that its situs for taxation is the residence of the owner is a mere fiction of law, and 'yields whenever it is necessary for the purpose of justice that the actual situs of the thing should be examined, and whenever the legislative intent is manifested that this legal fiction should not operate.'"

See also Faust vs. Building Association, 84 Md. 186.

In James Clark Distilling Company vs. Mayor and City Council of Cumberland, 95 Md. 468, the Court held, in an action to recover taxes levied on shares of stock, that notice of an increased assessment on shares of stock need not be given the individual stockholders, because the corporation represents the stockholders, and the law affords ample opportunity for the stockholders to be heard through the corporation (see pages 474 to 475).

For similiar reasons, the Court of Appeals of Maryland in the present case (96 Md. 310; Record, page 19) held that a notice to each stockholder of the assessment and valuation of his stock for taxation was unnecessary.

From a consideration of the aforegoing decisions of the Court of Appeals of Maryland it appears that the following principles have been established by that Court:

1. That shares of stock are personal property, and as such their situs for purposes of taxation ordinarily follows the person of the owner, and they are subject to taxation at his domicile. For this reason stock in non-resident corpora-

tions owned by residents of Maryland may be taxed in Maryland where the owners reside.

2. This general rule fixing the situs of stock at the domicile of the owner is a mere fiction of law, and yields whenever the legislative intent is manifested that this legal fiction shall not operate.

3. The Legislature has provided by statute that the situs of stock owned by non-residents of Maryland in Maryland corporations shall not be at the domicile of the owner (where it would be in the absence of statute), but shall be in the city or county in Maryland where the corporation has its principal office. This statute is valid, because the State's power of taxation extends to every thing which exists by the authority or with the permission of the State. The shares of stock are authorized to be issued by a charter derived from the State, and every person taking such shares, whether resident or non-resident, takes them subject to the power and jurisdiction of the State over them. For this reason the State may give the shares of stock held by non-residents a special and particular situs for purposes of taxation different from what the situs would be if no statute were passed.

4. The Maryland tax in respect of shares of stock is not a tax upon the stock, nor upon the corporation, but upon the owners of the stock. It is, however, made the duty of the corporation to pay the tax, and the corporation may then charge the same to the account of the individual stockholders.

5. Notice, or an opportunity for a hearing upon the question of the valuation of property to be assessed in Maryland, is a condition precedent to the right to assess and tax such property.

6. It is not necessary, however, to give to the individual stockholders this opportunity for a hearing, because, by the Maryland system of taxation, the corporation represents the stockholders, and notice to the corporation, for which provision is made, is, therefore, sufficient.

Before taking up the question of the validity of the Maryland law taxing non-resident stockholders on account of their stock in Maryland corporations, we would emphasize the fact that as early as 1841,—six years prior to the granting of the charter of the New York and Baltimore Transportation Line,—the stock in Maryland corporations held by non-residents of the State was taxed in Maryland just as it is today; and the right so to tax such stock was expressly upheld by the Maryland Court of Appeals. It is, therefore, no new principle of Maryland taxation which is being attacked in this cause, no innovation in our scheme of taxation which is being assailed. On the contrary, if the contention of the plaintiff in error should prevail, it will result in the overturning of a law which has been upon the statute books of Maryland for more than sixty years, during all of which time no one of the numberless corporations and individuals, who have annually paid taxes in accordance with its provisions, have ever thought it worth while to carry the question of their obligation to do so beyond the Court of last resort of Maryland.

PART III.

The State of Maryland has the power to fix the situs of shares of stock held in Maryland corporations by non-residents of the State, at the place in Maryland where the corporation has its principal office, and to provide for the taxation of such non-resident stockholders on account of their shares at such place, and no right granted or secured by the Constitution of the United States is violated thereby.

In the first place, it is of course settled that this Court will not set aside the Maryland statutes here in question, unless those statutes "encroach upon legitimate national authority or violate some right granted or secured by the Constitution of the United States."

Lake Erie Railroad Company vs. Pennsylvania, 153 U. S. 628, 641.

Kirtland vs. Hotchkiss, 100 U. S. 490, 498.

The question, therefore, and the only question, before this Court, is one of the power and authority of the State of Maryland to declare that the situs for purposes of taxation of stock in Maryland corporations held by non-residents of the State shall be in Maryland, and that such stock shall be there taxed. Moreover, if the State possesses this power, its right to exercise it is in no way affected by the fact that the non-resident stockholder may or may not be taxed upon his stock in the State of his domicile.

Blackstone vs. Miller, 188 U. S. 189, 205, and cases cited.

It is, of course, settled that the State's power of taxation is confined to persons, property and business within its own limits. Before a State can validly tax property, or persons on account of property, the property must be situated, or have its situs, within the State. The New York and Baltimore Transportation Line is a corporation of the State of Maryland, but a large number of its shares of stock, including those of the plaintiff in error, are owned by non-residents of the State. The Court of Appeals has held that the Maryland statute with reference to the taxation of shares of stock does not impose a tax upon the corporation, but upon the stockholders themselves. The first inquiry, therefore, with which we are confronted is: Where is the situs of the shares of stock in this Maryland corporation held by non-residents of the State? Is it in Maryland, where the corporation was chartered, and where it has its principal office? Or, is it in those States where the stockholders reside and have their domicile? If the situs of the stock is in Maryland, then, of course, stockholders, both resident and non-resident, are taxable in Maryland on account of it. If, on the other hand, the situs is not in Maryland, but is in the States where the stockholders reside, then such stockholders cannot be taxed in Maryland on account of their stock, because neither they nor their stock are within the jurisdiction of the State.

Of coure, there is no question but that movable personal property is always subject to taxation in the State where it is situated. Coe vs. Errol, 116 U. S. 517; American Refrigerator Transit Co. vs. Hall, 174 U. S. 70; Union Refrigerator Company vs. Lynch, 177 U. S. 149. Shares of stock, however, are personal property of an intangible nature. The general rule as to the situs of personal property is expressed in the old maxim of the common law, *mobilia sequunter personam*. This means that personal property is regarded as subject to the law of the owner's domicile. If this maxim applies to this particular stock, then the situs of the stock would, of course, be in Pennsylvania, where the owner has his domicile, and would not be within the reach of Maryland taxation.

The maxim referred to, however, is nothing more than a fiction of law, and yields whenever it is necessary for the purpose of justice that the actual situs of the property should be examined, and whenever the legislative intent is manifested that this legal fiction shall not operate.

In Maryland, the Legislature declared, as early as 1841, that the situs of stock in Maryland corporations owned by non-residents of Maryland should be at the place in Maryland where the corporation has its principal office. This enactment has ever since formed part of the statutory law of the State, and has been held valid many times by the Court of last resort in the State. There is no doubt, therefore, that the State of Maryland *intended* that the common law maxim should not apply to non-resident stockholders in Maryland corporations, but that such stockholders should be taxed upon their stock in Maryland. If, therefore, the State of Maryland had the power to do what it intended to do, namely, to fix the situs of such stock in Maryland, then the validity of the statute so fixing it must be upheld.

Whatever differences of opinion may once have existed upon this point, it is now settled that the State which has created a corporation may, for purposes of taxation, separate

the shares of stock from the person of the owner, and may tax the owner, no matter where his residence may be, to the extent of his holdings in the corporation.

Shares of stock represent money or property invested in the corporation. No matter where the stockholder may reside, his property in this stock is invested at the place where the corporation transacts its business. It is there that the stockholder's interest in the corporation is located and protected, and it is but fair that the stockholder should contribute to the expenses of the State which affords this protection.

The corporation derives its existence, and all its powers and franchises, from the State which creates it. Its shares of stock are authorized to be issued by the charter which the State has granted. They are, therefore, subject to the sovereign power and control of the State which thus brings them into being. Since this is so, the State which authorizes and creates the shares may provide that their situs for taxation shall be within the State, no matter where the holders may reside, and thereafter every person taking such shares must take them subject to the special situs thus prescribed for them, and therefore, subject to the State's power of taxation over them.

It is not necessary to look beyond the decisions of this Court in order to establish the principles which we have thus laid down.

In National Bank vs. Commonwealth, 9 Wall. 353, this Court, in speaking of the obligation there placed upon the corporation to pay the tax upon its shares of stock, said, on page 361 :

> "In the case of shareholders not residing in the State it is the only mode in which the State can reach their shares for taxation."

In Tappan, Collector, vs. Merchants' National Bank, 19 Wall. 490, this Court decided the very point here involved. The Merchants' National Bank had been incorporated under

the National Banking Act, and this Act provided that the shares of any national bank "owned by non-residents of any State shall be taxed in the city or town where said bank is located, and not elsewhere." The Illinois statute provided that the stockholders in banks should be assessed and taxed on the value of their shares of stock in the county, town or district where such bank was located, and not elsewhere, "whether such stockholder resides in such county, town or district or not." This Court held that the State of Illinois had the right to tax all stockholders in national banks doing business in Illinois on account of their shares, whether such stockholders were residents or non-residents of the State.

The decision was based upon the principle that for the purposes of taxation, the situs of shares of stock may be separated from the person of the owner, and the stockholder, even though a non-resident, may be taxed on account of his stock at the place where its situs is thus established.

This case has been approved in the recent cases of New Orleans vs. Stempel, 175 U. S. 309, 320, and Bristol vs. Washingson County, 177 U. S., 133, 144, and is, we submit, conclusive upon the question now under consideration.

In 1841—six years before the charter of the New York and Baltimore Transportation Line was granted by the State of Maryland—the law of Maryland had fixed the situs of stock owned by non-residents in Maryland corporations at the place in Maryland where the corporation had its principal office, and such stockholders were there taxable on account of their shares. All corporations thereafter created by the the State were subject to all the provisions of the then existing general laws of the State, and all stockholders took their stock subject to the requirements of these general laws and therefore subject to the condition that the situs of the stock should be in Maryland, and that they should there be taxed on account of it. When, therefore, the New York and Baltimore Transportation Line was incorporated in 1847, this provision of the General Law was as binding upon all

persons who took stock as it would have been had it been inserted in the charter itself. In taking stock, the stockholders necessarily agreed that they would submit themselves to all the conditions as to taxation and otherwise imposed by the company's charter, or by the General Law to which the holding of that charter was subject. In a word, they necessarily acquiesced in the provision of the law that the situs of their stock for taxation should be in Maryland.

It has been held that a statute giving shares of stock a situs for taxation at the location of the corporation may be passed even *after* the incorporation. St. Albans vs. National Car Company, 57 Vt. 68. All the more must this be so where, as here, the statute was in force *before* the company's charter was granted.

In Pullman's Palace Car Company vs. Pennsylvania, 141 U. S. 18, this Court, in holding that the Pullman's Palace Car Company was taxable in Pennsylvania, on account of cars used in that State, although the principal office of the company was in Illinois, said, on page 22:

> "For purposes of taxation, as has been repeatedly affirmed by this Court, personal property may be separated from its owner, and he may be taxed on its account at the place where it is, although not the place of his own domicile, and even if he is not a citizen or a resident of the State which imposes the tax."

In Adams Express Company vs. Ohio, 166 U. S. 185, 224, this Court said that the maxim *mobilia sequuntur personam* "was never of universal application and seldom interferred with the right of taxation."

In Savings & Loan Society vs. Multnomah County, 169 U. S. 421, this Court held that the Oregon statute taxing mortgages on land in Oregon to the mortgagees in the county where the land lies, was not unconstitutional because it applied to mortgages owned by non-residents of the State.

In Traveller's Insurance Company vs. Connecticut, 185 U. S. 364, the statute of Connecticut provided that the officers

of each corporation whose stock was liable to taxation should deliver annually, on the first day of October, to the Comptroller "a sworn list of all its stockholders residing without this State on said day, and the number and market value of the shares of stock therein then belonging to each, and shall on or before the twentieth day of October, annually, pay to the State one and one-half per centum of such value."

The Connecticut statute also provided that the stock of every corporation should be deemed personal property and that the corporation should have a lien upon all the stock owned by any person therein for all debts due to it from him. The statute also provided that shares of stock owned by residents of the State should be listed at their market value, and that for purposes of taxation the assessed value of the company's real estate should be deducted from the market value of such stock.

The State of Connecticut instituted action to recover certain taxes claimed to be due by the company on account of non-resident stockholders. The company contended that as the stock of the non-resident stockholders was assessed at its market value, without any deduction on account of the real estate held by the corporation, and as the stock of resident stockholders was assessed at its market value, less the proportionate value of all real estate held by the corporation upon which it already paid a tax, there was such a wrongful discrimination between the taxation of resident and non-resident stockholders as violated the Federal Constitution.

This Court, however, upheld the validity of the tax, and said that there was no wrongful discrimination. So far as appears from the Court's opinion in this case, the power of the State of Connecticut to tax non-resident stockholders on account of stock owned by them in Connecticut corporations was not disputed.

The case which has furnished the basis for practically all the attacks made upon State laws taxing non-residents on account of stock held by them in domestic corporations, is

the case of the State Tax on Foreign Held Bonds, 15 Wall. 300. In this case, this Court held that a law of Pennsylvania, passed after the issue of bonds by a railroad corporation of Ohio doing business in Pennsylvania, requiring the corporation to retain a certain tax from the interest due on the bonds of the corporation, and pay the same to the State of Pennsylvania, impaired the obligation of the contract between the company and its bondholders, and was, therefore, invalid. The Court took occasion to say in this case that the bonds in question, which were all held by non-residents of the State of Pennsylvania, were not taxable in Pennsylvania, because, being personal property of the bondholders, they followed the person of such bondholders, and were taxable at their domicile.

There are at least three grounds of distinction between this case and the one now before the Court:

1. The bonds before the Court in 15 Wall. were all issued prior to the enactment of the statute imposing the tax. On page 322, the Court said that the legality of the tax could not be questioned if it had been authorized by the charter of the company. See also Blackstone vs. Miller, 188 U. S., 189, 206, in which this Court held that when a State law imposing a tax upon transfers is in force *before* the funds come into the State, the tax cannot be said to impair the obligation of the contract.

In the present case, the tax was not, it is true, provided for in the charter of the New York and Baltimore Transportation Line, but it was provided for by the General Laws of Maryland in force at the time that charter was granted, and all persons taking the stock necessarily submitted themselves to the requirements of this law, and took their stock subject to whatever burdens that law imposed upon it.

2. The securities before the Court in 15 Wall. were bonds, and the Court held that the mortgage transferred no title, but was a mere security for the debt. Therefore, the property mortgaged belonged entirely to the company, and in

no sense to the non-resident bondholders. (Page 322.) The same cannot be said of stock. The stock represents the company's property, and its holders have more than a mere security for a debt. Each share represents a distinct interest in the corporate property itself, and confers upon its holder the right to share in the management of the corporate affairs, the right to share in surplus earnings, and, upon dissolution, to have the assets reduced to money and ratably distributed. This distinction is clearly pointed out in Matter of Bronson, 150 N. Y. 1, where bonds owned by a deceased non-resident bondholder were held not subject to taxation under the Transfer Tax Act of New York (and this under the authority of 15 Wall.); but stocks were held to be taxable. Because of this difference between stocks and bonds, whatever may be the case as to the latter, yet the former represents property in the corporation which may be given a situs for purposes of taxation in the State which granted the charter.

3. The reason why the tax before the Court in 15 Wall. was held invalid, was that to enforce it would have *impaired the obligation of the contract* between the corporation and its bondholders, by compelling the latter to accept a less amount of interest than the amount which the corporation had expressly covenanted to pay them. All that the Court said about the situs of the bonds being at the residence of the holders, and, therefore, beyond the taxing power of the State, was unnecessary to the decision of the case. If the statute in question operated to impair the obligation of the contract, then it was to that extent invalid, and its invalidity could not be affected by the fact of where the situs of the bonds was. The State could not impair the obligation of the corporation's contract with resident bondholders, any more than it could impair the obligation of the contract with bondholders who were non-residents of the State. In Savings Society vs. Multnomah County, 169 U. S. 421, this Court, on page 428, criticised the opinion in 15 Wall. as

having gone beyond what was required for the decision of the case.

Of course the tax drawn into question in the present case cannot be said to impair the obligation of any contract.

There are a few other United States authorities to which we ask the Court's attention.

In the Delaware Railroad Tax Case, 18 Wall., 206, this Court declined to decide whether, if the tax there in question had been upon stockholders, and not upon the corporation, it would have been invalid as to non-resident stockholders or not. (Page 230.) In the following year, however, as already pointed out, in Tappan vs. Merchants' National Bank, 19 Wall. 490, the Court did decide this question, and held that such non-resident stockholders were taxable.

In Murray vs. Charleston, 96 U. S. 432, the tax there in question was held invalid, because it impaired the obligation of the contract between the city of Charleston and those who took its stock. The plaintiff in that case happened to be a non-resident of the State, but the decision did not turn on this point. (See page 448.)

In Kirtland vs. Hotchkiss, 100 U. S. 491, it was held lawful for a State to tax its resident citizens on debts held by them against non-residents, secured by mortgages upon real estate in other States. This was on the principle that a debt has its situs at the residence of the creditor, and may be there taxed. In commenting on this case, this Court, in in New Orleans vs. Stempel, 175 U. S. 309, 321, said:

> "It was assumed that the situs of such intangible property as a debt evidenced by bond was at the domicile of the owner. There was no legislation attempting to set aside that ordinary rule in respect to the matter of situs."

In Erie Railroad Company vs. Pennsylvania, 153 U. S. 628, it was held that the State of Pennsylvania could not make a non-resident corporation its agent to collect taxes

imposed by it, and it was also held that the tax there in question impaired the obligation of the contract between the corporation and its bondholders.

In New Orleans vs. Stempel, 175 U. S. 309, this Court held that notes in the possession of an agent in New Orleans, who collected the interest and principal as they became due, and which notes were secured by mortgage on land in Louisiana, were taxable in Louisiana, although owned by a non-resident of the State. The Court in this case reviews a great number of authorities, and calls attention to the fact that there have been frequent recognitions by this Court of the power of the State "to separate for purposes of taxation the situs of personal property from the domicile of the owner." (Page 319.)

In Bristol vs. Washington County, 177 U. S. 133, and in State Board of Assessors vs. Comptoir National D'Escompte, 191 U. S. 388, it was also held that the evidences of debts in the hands of an agent can be taxed in the State where they are so situated, although the creditor may be a citizen of another State.

We have thus reviewed all the decisions of this Court which seem to us to throw light upon the question now under consideration, and although this review has necessarily been one of some length, we feel that it is justified by the supreme importance to the State of Maryland and to the City of Baltimore, of having this Court uphold a system of taxation which has existed for more than a half a century, and during all that time has contributed so considerable a share to the expenses of the State and Municipal Governments in Maryland; the very Governments, this Court will observe, which have guarded, protected and advanced the business interests of those non-resident stockholders who have invested their money in Maryland enterprises. It is no more than just that these non-resident stockholders should be called upon to contribute, through the means of taxation, and in proportion to their holdings in Maryland corporations, to the

support of the City and State which by their laws have helped to make those holdings valuable.

We submit that the decisions of this Court conclusively establish the right of a State to declare that the situs for taxation of shares of stock in corporations created by it shall be within its own borders, and that the holders of such stock, whether resident or non-resident, shall be there subject to taxation. The effect of this, so far as non-resident stockholders is concerned, is to separate the situs of their stock from the domicile of the owners, and to fix this situs in the State where the corporation was created.

There is another aspect in which this matter of situs may be regarded. By the statutes of Maryland, shares of stock in corporations doing business in Maryland are made subject to seizure and sale by way of execution on judgment, or in a proceeding by attachment on original process (Code, 1902, Article 23, Sections 392 to 402, and Article 9 Section 18; Code, 1888, Article 23, Sections 277 to 287, and Article 9, Section 18). These provisions apply to stock owned by non-residents of the State, as well as to stock owned by residents.

If stock in Maryland corporations owned by non-residents of the State can be given such a situs within the State as to be subject to seizure and sale on execution, then in the language of this Court, in New Orleans vs. Stempel, 175 U. S. 309, 322, "it would seem to follow that the State has power to establish a like situs within the State for purposes of taxation."

The various State decisions upholding the validity of statutes similar to the one now under consideration are collected in Cook on Corporations, Vol. 2, Section 566, and notes; but, in view of the repeated adjudications of this Court upon the point, we do not think it necessary to cite these decisions in detail. We, therefore, submit that the power of the State of Maryland to tax non-resident stockholders on account of stock held by them in Maryland

corporations is unqestioned, and we pass to a consideration of the second point relied upon by the plaintiff in error as an objection to the constitutionality of the Maryland statute.

PART IV.

Although the laws of Maryland make no provision for notice to the individual stockholders of a Maryland corporation, or for any opportunity to be heard by them, upon the question of the valuation of their stock for purposes of taxation, yet ample provision is made for notice to, and an opportunity to be heard by, the corporation itself, and inasmuch as the corporation, under the Maryland system of taxation, acts for and as the representative of the stockholders, the Maryland statute gratifies the requirement of due process of law.

There have been so many decisions, particularly in recent years, in which the Court has construed the phrase "due process of law," that there can no longer be any doubt as to its meaning, and no good purpose could be subserved by reviewing these decisions in detail.

An examination of them discloses that this Court has never yet attempted to accurately define the meaning of "due process of law," preferring to leave the intent of the words to be ascertained by the gradual process of judicial inclusion and exclusion. Regard must always be had to the cause and object for which the property is taken, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements. With reference to the last two instances, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential. "But laws for the assessment and collection of general taxes stand upon a somewhat different footing, and are construed with the utmost liberality, sometimes even to the extent of holding that no notice whatever is necessary." (Turpin vs. Lemon, 187 U. S. 51, 58.)

So far as the assessment of property for general taxation is concerned, due process of law, speaking generally, requires that at some stage in the proceedings notice and an opportunity for a hearing be given to the owner of the property with reference to the amount of his assessment. But as to the mode, manner and character of this notice, each case must be controlled by its own circumstances. The most that can be said, is that the assessment proceedings must be in conformity with natural justice, and that the notice must be such as is appropriate and suitable to the nature of the case. If the kind of notice which the State statute prescribes meets this standard, then the requirement of due process of law is gratified. The statute, moreover, will be construed with the utmost liberality, "and it is only when the proceedings are arbitrary, oppressive and unjust, that they are declared to be not due process of law." (See Glidden vs. Harrington, 189 U. S. 255, 258, where the earlier authorities are collected.)

In the light of what has just been said, we will now consider the contention of the plaintiff in error, that the Maryland statute violates the requirement of due process of law, because it contains no provision for giving notice, or an oppurtunity to be heard, to the individual stockholders, upon the question of the valuation to be placed upon their stock.

This contention, if well taken, applies to resident stockholders no less than to non-resident stockholders, so that if the law is open to this objection with respect to the assessment of shares of stock owned by non-residents of the State, it is open to the same objection with respect to shares of stock owned by residents of the State, and it would follow that the entire system for taxing shares of stock which has existed in Maryland for over a half a century would fall to the ground. This Court will not contribute to an effect so far reaching as this, unless compelled to do so by the plain requirements of law.

It is true that the Maryland statutes do not contemplate giving any notice or opportunity for hearing to the indi-

vidual stockholders. Ample provision, however, is made for notice and a hearing to the corporation itself. The law requires the list of stockholders to be in the hands of the State Tax Commissioner by March 15, in each year (Code, 1902, Article, 81, Section 153); the State Tax Commissioner must make his assessments by May 15, in each year (Section 153); and as soon as he has done this, he is required to certify his valuation to the Comptroller of the Treasury (Section 165.) It is then made the duty of the Comptroller to at once notify the corporation of the assessment, and the corporation is given the right to appeal, within thirty days, to the Comptroller and the State Treasurer, and have a hearing before those officials.

The statute, therefore, prescribes the time when the assessment must be made, the time when the notices must be given, and the time within which the appeal must be taken. The place where the appeal will be heard is also fixed, because "official proceedings are always, in the absence of express provision to the contrary, to be had at the office of the officer charged with the duties." Merchants' and Manufacturers' Bank vs. Pennsylvania, 167 U. S. 461, 466. It is, therefore, beyond question that the Maryland statute contains ample provision for giving notice and an opportunity to be heard to the corporation, and if this is sufficient to warrant the assessment of the stockholders on account of their stock, then the requirement of due process of law is gratified.

A glance at the Maryland system for taxing shares of stock shows that, from the very beginning of the proceedings to the very end, the corporation acts for and is the representative of its stockholders. The *corporation* is required to furnish the State Tax Commissioner with a statement of the number of shares of stock, "with such information in regard to the value of the same as may be required by the said Commissioner." (Code, 1902, Article 81, Section 153.) The State Tax Commissioner is authorized to examine the *officers of the corporation* in order to ascertain the value of the stock.

(Section 151.) The *corporation* is required to furnish the several county commissioners and the Appeal Tax Court with the list of both resident and non-resident stockholders. (Section 159.) The *corporation* is given a hearing with respect to the assessment placed upon its stock. (Section 165.) The *corporation* is required to pay the taxes (Sections 159 and 162), and although the taxes may be charged to the account of the individual stockholders, yet they must be paid by the corporation whether dividends have been declared or not. (American Casualty Insurance Company Case, 82 Md. 535.)

The reason why the corporation, and not the stockholder, is made the factor in all these matters, is not only because the corporation is within ready access of the authorities, while the stockholders are scattered throughout the State and the country, but also because the corporation alone is in a position to furnish the information necessary for the proper assessment of its stock. If the opportunity for a hearing were given the individual stockholders, they could only avail themselves of it by calling upon the corporation for data which it possesses, and which they do not possess. But by giving notice to the corporation, the law enables that body to have a hearing which is not only the most vitally interested, because of its primary obligation to pay the taxes, whether dividends are owing or not, but which is also the very body best able to present all the facts and circumstances bearing upon the proper valuation to be placed upon its stock.

In Clark Distilling Company vs. Cumberland, 95 Md. 468, Chief Justice McSherry, on page 474, set forth the reasons why notice to the corporation was sufficient.

> "A notice to each shareholder is unnecessary, because the corporation represents the shareholders. The officers of the corporation are required by the Code to make an annual return to the State Tax Commissioner, and upon the information disclosed by that return the valuation of the capital stock is placed each year. If

> the valuation is not satisfactory an appeal may be taken by the corporation for the shareholders. An opportunity is thus afforded for the shareholders to be heard through the corporation, and that gratifies all the requirements of law. If each and every shareholder in the great number of companies throughout the State had a right to insist upon a notice before an assessment of his shares could be made, and if each were given a separate right of appeal, it would be simply impossible to fix annually a valuation on shares of capital. The policy of the law is to treat the corporation not merely as tax collector after the tax has been levied, but to deal with it as the representative of the shareholders in respect to the assessment of the shares; and when notice has been given to the corporation and it has the right to be heard on appeal, notice is thereby given to the shareholders and thy are accorded a hearing."

In view of the aforegoing considerations, we submit, that where, as in Maryland, the law provides for giving notice and a hearing to the corporation itself, and where, as in Maryland, the corporation is the active representative of the stockholder at every step in the assessment and taxation of his shares of stock, a notice to the corporation is a notice to the stockholder, and is in fact the kind of notice which is appropriate and suitable to the nature of the case, and is in conformity with natural justice. The assessment of stock in pursuance of such a notice is in no sense "arbitrary, oppresive and unjust" to stockholders. This being so, the requirement of due process of law is gratified.

PART V.

If the State of Maryland can constitutionally tax non-residents on account of their stock in Maryland corporations (as we submit it can), then equity will not enjoin the collection of the taxes merely because the law fails to provide for notice or a hearing.

That the Maryland statute, in providing for notice to the corporation, complies with the requirement of due process

of law, seems to us so clear that we will dwell but briefly upon the jurisdiction of equity to grant an injunction in this cause. Indeed, we can well afford to be brief upon this last point, because, assuming that the State of Maryland has the power to tax non-resident stockholders in Maryland corporations, it has been very recently decided, in the case of People's National Bank vs. Marye, 191 U. S. 272, that equity will not enjoin the collection of such a tax upon the sole ground that the statute authorizing it contained no provision for notice or a hearing.

In the Marye Case, the Court decided that where it was conceded that some part of the taxes levied on shares of stock was due, equity would not enjoin the collection of the taxes, unless the amount conceded to be due was first paid or tendered. To this the answer was made that the whole tax was void, because the statute did not provide for notice to the stockholder before determining the value of his shares. This is the exact contention of the plaintiff in error in the present case.

This Court, however, held that where "there is a statute which provides for an assessment and gives jurisdiction to the taxing officer, under some circumstances, to make one, but the particular assessment is invalid for want of a notice to the tax-payer, or some other kindred objection, the equitable duty still rests upon him to pay what would be his fair proportion of the tax as compared with that laid upon other property before he can ask the aid of the Chancellor to enjoin the collection of the balance. This is the equitable rule, and it is good morals as well." (Page 281.)

The Court further said that the stockholder owed *something* to the Government, as a tax upon his shares, and that this equitable obligation to pay some tax, the conceded amount of which was perfectly clear under the law, was not obliterated because the tax could not, by reason of some failure in matter of detail, be collected, and might be called void. (Pages 282-3.)

In the present case, there exists a valid Maryland statute clearly providing for the assessment and taxation of non-resident stockholders on account of their stock. If this statute is not enforceable, it can only be because it fails to provide for a notice to the stockholder. But, however this may be, the statute places the stockholders under the equitable obligation of paying the taxes which it was thus clearly intended they should pay. The tax, even if uncollectible, is still equitably and justly due. A Court of Equity will not lend its aid to stockholders attempting to escape payment of taxes which the State intended to impose and had the right to impose, merely because "some part of the law may be unconstitutional because of a failure to comply with some matter of detail." (Marye's Case, page 282.)

For the reasons already given, we, therefore, submit that the Maryland statute here in question violates no provision of the Federal Constitution, or of the Fourteenth Amendment, and that the judgment of the Court of Appeals of Maryland should, therefore, be affirmed.

Respectfully submitted,

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